IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

Crl.Rev.Pet.No. 172 of 1998

Against the judgment in Crl.Appeal No.156/92 of the Court of Sessions, Palakkad Division at 4-9-97 confirming the judgment in C.C.No.263/91 of the Court of the Judicial Magistrate of I Class, Mannarkkad dated 17-11-1992.

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REVN. PETITIONER:

KUNHI MOIDU, S/O IBRAHIM
POTTASSERY, MANNARKKAD, PALAKKAD

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENTS:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM

BY PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P.BALACHANDRAN, J.

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Crl.R.P.NO.172 OF 1998

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Dated this the 18th day of December 2006

ORDER

The petitioner is the accused in C.C.263/91 on the file of Judicial First Class Magistrate's Court, Mannarkkad. He was charge sheeted by the Forest Range Officer, Mannarkkad in O.R.18/90 on the allegation that on 25-3-1990, the petitioner trespassed into the Injikulam Malavaram of Potasseri Section of Thenkara forest range vested in the State Government and cut down different types of trees standing therein and attempted to remove them from the forest causing a loss of Rs.500/- to the Government and thereby committed offences punishable under Sections 27(i)(g) and 27(2)(c) of the Kerala Forest Act.

2. On appearance of the accused pursuant to issuance of summons, the learned Magistrate framed charge against the accused for offences punishable under Sections 27(i)(g) and 27(2)(c) of the Kerala Forest Act; read it over and explained it to him and questioned him. Thereupon he pleaded not guilty and consequently a trial of the case was conducted.

3. On the side of the prosecution PWs 1 to 3 were examined

and Exts.P1(a) and P2 were got marked. On the prosecution closing their evidence the accused was questioned under Section 313 Cr.P.C. Thereupon he denied all incriminating circumstances appearing in evidence against him and maintained that he is innocent. According to him, he is a rubber tapper by profession and he has no need to go into the forest and he has not gone to the forest. In other words, his case is one of total denial. However, he did not adduce any evidence in defence.

4. The learned Magistrate considered the case in the light of the evidence adduced as aforesaid; found the petitioner guilty of the offence punishable under Sections 27(i)(g) and 27(2)(c) of the Kerala Forest Act convicted him thereunder and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.1,000/- and in default to undergo simple imprisonment for three months under Section 27(i)(g) of the Kerala Forest Act and to pay a fine of Rs.1,000/- and in default to undergo simple imprisonment for three months under Section 27(2)(c) of the Kerala Forest Act. Aggrieved by the conviction and sentence so passed against him, the petitioner preferred Crl. Appeal 156/92 before the Sessions Court, Palakkad.

The Sessions Judge after hearing both sides confirmed the conviction of the petitioner for offence under Sections 27(i)(g) and 27(2)(c) of the Kerala Forest Act but altered the sentence to one of simple imprisonment for three months and to pay a fine of Rs.1,000/- and in default to undergo simple imprisonment for one month under Section 27(i)g of the Kerala Forest Act and to pay a fine of Rs.1,000/- and in default to undergo simple imprisonment for three months under Section 27(2)(c) of the Kerala Forest Act. Hence, this revision at the instance of the aggrieved accused.

5. It is argued by the learned counsel for the petitioner that there is absolutely no convincing evidence in the case either to show that the place from where the trees were allegedly cut is forest land vested in the Government or to show that trees as alleged had actually been cut by the petitioner from anywhere, either from the vested forest or from the reserved forest.

6. PW1 is a Forest Guard and it is he, along with another Forest Guard V.K.Rajan, who is alleged to have detected the offence involved in this case.They have prepared Ext.P1 mahazar on 25-3-90. The recital in the mahazar is to the effect that they heard the

sound of cutting of trees from the vested forest at Injikulam within Potasseri Section in Thenkara special forest range; that they proceeded towards the place from where they heard the sound and thereupon they saw that the accused was cutting the branches of a tree which had already been felled and that though they chased him, in an attempt to apprehend him, he took to his heels and could not be apprehended. The mahazar further describes the measurements of the timber and branches of the tree that were so found cut at the scene of occurrence. The mahazar further recites that a few other trees also had been cut and removed from the scene of occurrence as evidenced by the stumps of a few more trees seen at the site within the vested forest. The loss suffered by the Government as stated in the mahazar is Rs.500/-. The mahazar also contains a verification entry made by the section forester of Potasseri one P.R.Viswanathan. The said forester was examined as PW2. PW3 is Forest Range Officer Sathyanathan who has given evidence that his predecessor in office one Babu has prepared Form-I report which is marked as Ext.P2. To the specific question put to him in cross examination as to whether there is any reason as to why no action

has been taken to dispose of the timber only because there is no such timber available, PW3 has denied the suggestion. It is vehemently contended by the counsel for the petitioner that no material object has been produced before court to substantiate the commission of the offence; that if at all any tree was cut from the forest, material object in respect thereof has to be produced before court and that without production of any piece of timber, the case of the prosecution that trees were cut down from the forest cannot be believed and the petitioner cannot be convicted on that score.

7. In this connection, it is worthy to note that PW1 has deposed in cross examination that the place from where the tree was cut is a portion of the vested forest included as item no.43 in the list of vested forests, but that, however, he is not able to say the extent of vested forest in each item. He has also stated in cross-examination that the accused was being found cutting the felled tree into pieces but no such piece is produced before court. Though he has denied the suggestion that the alleged place of occurrence is not any portion of the vested forest, no evidence is produced to show the extent of vested forest which has been annexed to the reserved

forest and forms part of reserved forest by reason of the deeming provision under Section 4 of the Kerala Private Forests (Vesting and Assignment) Act, 1971. Other than PWs 1 to 3 who are forest officials there is no independent witness in the case and as rightly argued by counsel for the petitioner apart from Ext.P1 mahazar and Ext.P2 Form-1 report prepared by the forest officials there is not even an iota of evidence to bring home the guilt in the accused. He has also heavily relied on the decision of this court in **State of Kerala v. Ancy Philip (2006 (1) KL 699)** wherein this court had occasion in a writ appeal to observe that the forest officers are bound to produce the timber before the court and that when timber or other forest produce are seized alleging commission of forest offence in respect thereof, the same has necessarily to be tried by the Magistrate and to have a successful prosecution of the accused, it is essential that the forest produce, which is the subject matter of the offence complained of, is produced before the Magistrate and that without the 'thondi' article, it is impossible to have a successful prosecution.

8. In the light of the observations made by a division bench of

this court in the decision aforesaid, I am bound to accept the contention advanced on behalf of the petitioner that there is absolutely no proof of any tree having been cut from the forest; that on the basis of Exts.P1(a) and P2 no conviction of the petitioner could be entered into by the courts below; that the conviction so entered into is illegal, improper and irregular and deserves to be set aside by this court in revision. The Government Pleader is not able to support the conviction entered into by the courts below especially in the light of the decision in **State of Kerala v. Ancy Philip (2006 (1) KL 699)** rendered by a division bench of this court.

In the circumstances, allowing this revision I set aside the conviction entered into by the courts below against the petitioner for offence under Sections 27(1)(g) and 27(2)(c) of the Forest Act as also the sentence awarded as modified by the appellate court and acquit the petitioner of the offences aforesaid. His bail bond shall stand cancelled.

K.P.BALACHANDRAN, JUDGE

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Page numbers

K.P.BALACHANDRAN, J.

- -
Crl.R.P.NO.172 OF 1998
- -

ORDER

Dated 18th December 2006